

Family Law Arbitration: an alternative to court

By [Nicola Frost](#), 3PB Barristers

Impact of Delay

Following the breakdown of a relationship, the emotional burden for parties is often exacerbated by having to wait for a conclusion to their proceedings. Being embroiled in ongoing litigation - no matter how 'amicable' the separation - takes an emotional toll on the whole family. Over time, increasing legal costs reduce the assets available for division and may have a direct impact on the family's finances in general. When delays, inherent in court proceedings, invariably become a feature of a case, parties may become entrenched in their respective positions and settlement becomes vanishingly likely.

Despite their best hopes and efforts, sometimes parties just cannot agree on what the outcome of their case should be. Sometimes multiple issues remain live; frequently it is just one discrete issue that prevents them from reaching a settlement. There may be a matrimonial vs non-matrimonial property point, a claim as to the validity of a pre-nuptial agreement, a third party seeking to assert an interest in property or, indeed, any factual dispute between the parties that, without resolution, the parties cannot move forward to settlement.

Parties may have agreed on all issues but one (contingent on the totality of their respective offers), perhaps in mediation, at FDR / private FDR, at Early Neutral Evaluation or in another form of non-court dispute resolution but the fact they cannot agree on everything means all of their agreements evaporate. They are, effectively, forced into court proceedings. People lose ownership of all decisions because it is the court that ultimately decides for them.

Court proceedings have a place and are undoubtedly necessary in some cases (e.g. where there are significant issues of domestic abuse or child safeguarding concerns). However, in other cases, arbitration can offer a dignified, efficient, highly personalised, bespoke, alternative to court.

Arbitration can be used as a stand-alone process, or in conjunction with other forms of non-court dispute resolution.

Benefits of Arbitration

Arbitration offers an alternative process. Arbitration feels familiar, akin to court proceedings. Arbitrations usually involve live evidence and submissions, although can also be paper based. In either case, arbitration will result in a binding decision being made at the end of the process; a decision which is conveyed to the parties in writing.

The key difference is that arbitration offers people a degree of autonomy around their proceedings.

The parties agree to arbitrate. The date of the arbitration can be set for the convenience of the parties and the arbitrator and the parties choose the location. They also choose their arbitrator, an independent expert member of the Institute of Family Law Arbitrators (IFLA). Once the chosen arbitrator accepts the appointment, they will be formally appointed by IFLA; in the event that the parties are unable to agree on the identity of the arbitrator, IFLA can appoint on their behalf.

Parties get the sole attention of the arbitrator: for preparation, for directions, for the arbitration itself. The arbitrator will also take time to properly consider their decision and will always provide a decision in writing: in financial remedy cases the arbitrator will provide a written 'award' and in children cases the arbitrator will provide a written 'determination'.

Parties may ask their arbitrator to deal with all issues or a discrete issue that has, thus far, prevented settlement. The parties own the process: it is theirs.

The arbitrator's decision is legally binding and enforceable. On receiving their written decision, the parties file an order, mirroring the arbitrator's award or determination, for the court to endorse. As with any decision made by the court, the parties have a limited right to challenge the arbitrator's decision, by way of an appeal.

Overall, parties have the opportunity to be heard and have their case dealt with efficiently, without lengthy delays. Arbitration also ensures privacy, as it is a confidential process.

3PB: Experts in Arbitration

The 3PB Arbitration Team offers a bespoke arbitration service from trusted experts. Pricing is transparent and we go above and beyond to ensure every client feels heard, respected and supported. Clients will receive a dedicated and personalised service from their IFLA-appointed 3PB arbitrator.

Even with the most constructive and collaborative efforts, parties may not always be able to reach agreement. As an arbitrator, I always welcome the opportunity to assist in navigating - often complex - issues and, ultimately, facilitating a resolution that brings matters to a close efficiently and fairly.

Arbitration enables resolution in a timely fashion making a challenging time more straightforward and allowing families to move on with the next chapter of their lives.

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Nicola Frost

Barrister, Arbitrator, Member of Bristol Family Law Solutions
3PB Barristers

0117 928 1520

nicola.frost@3pb.co.uk

3pb.co.uk